

John Ngwa Fomuki, #116370A, ) C/A No. 0:09-1827-RBH-PJG  
)  
Plaintiff, )  
) **REPORT AND RECOMMENDATION**  
vs. )  
)  
York County Detention Center; York County Public )  
Defender; Officer Catoe, and Officer Guidey, )  
)  
Defendants. )  
)

### PRO SE AND IN FORMA PAUPERIS REVIEW

<sup>1</sup>Title 28 U.S.C. § 1915A (a) requires an initial review of a “complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.”

404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir. 1995) (*en banc*); Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).

The Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action “fails to state a claim on which relief may be granted,” “is frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A finding of frivolousness can be made where the complaint “lacks an arguable basis either in law or in fact.” Denton, 504 U.S. at 31. Hence, under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed *sua sponte*. Neitzke, 490 U.S. 319; Allison v. Kyle, 66 F.3d 71 (5th Cir. 1995).

This court is required to liberally construe *pro se* complaints. Such *pro se* complaints are held to a less stringent standard than those drafted by attorneys, Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. Erickson v. Pardus, 551 U.S. 89 (2007); Hughes v. Rowe, 449 U.S. 5, 9 (1980); Cruz v. Beto, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se* complaint, the plaintiff's allegations are assumed to be true. Fine v. City of New York, 529 F.2d 70, 74 (2d Cir. 1975).

Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990). The mandated liberal construction afforded to *pro se* pleadings means that if the court can

reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a district court may not rewrite a petition to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for him, Small v. Endicott, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

## **BACKGROUND**

The plaintiff's Complaint contains the following statement of claim:

- I had a court date on the 28 of April 2009, and I fill a request form of a public defender on April 12 of 2009. I was told that it was forwarded to the public defender office and on the 28<sup>th</sup> I went to court with no Lawyer and I get a letter saying that, they do not have a record of me applying for a lawyer.
- When I went to court that day, my co-defendant plead guilty for the charge and I plead not guilty that was the only time I was in court.
- Fom the Folony case, I was never taken to court and any time I ask I was told that they will come get me. I missed both primir court date and gen. section court date.
- On the 23 of June 2009, I was supposed to go to court and the refused me form going. When I ask Officer Catoe he told me they will sign guilty plead for me. That why I wrote to you. I think they are taking advantage of me.
- They have begin handle me with fear tactics and I just need a fair trial.
- I got some evidence showing there lies and witness.
- I have been in jail for over 3 month never spoke to a lawyer. Begin in court on only on my magistrate court in Fort Mill, SC.
- They open my outgoing mails and act as my friend that I wrote the letter to put pressure for me to plead guilty.
- Last Tuesday I was refused a papper, that they hand out for ordering of envelopes and other stuff.
- I also worried that I may not have a fair trial. The Officer Guidry, have begin help my co-defendant to make calls on the outside.

(Compl., Docket Entry 1 at 3-4.) The complaint form section entitled “relief” which requests “[s]tate briefly and exactly what you want the court to do for you,” is blank. (Id. at 5.)

### **DISCUSSION**

This Complaint appears to be filed pursuant to 42 U.S.C. § 1983, which “is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” Albright v. Oliver, 510 U.S. 266, 271 (1994) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 allows “a party who has been deprived of a federal right under the color of state law to seek relief.” City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim for damages under 42 U.S.C. § 1983, an aggrieved party must allege: (1) that he or she was injured; (2) by the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States; (3) by a person acting under color of state law. See 42 U.S.C. § 1983.

The named defendant “York County Detention Center” should be dismissed because it is not a person subject to suit under § 1983. It is well settled that only “persons” may act under color of state law, therefore, a defendant in a Section 1983 action must qualify as a “person.” The “York County Detention Center” is not a “person” within the meaning of § 1983. See Monell v. Dep’t of Soc. Serv., 436 U.S. 658, 690 & n.55 (1978) (noting that for purposes of § 1983 a “person” includes individuals and “bodies politic and corporate”); see generally 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1230 (2002). The Detention Center consists of buildings, facilities, and grounds—inanimate objects that do not act under color of state law—and thus is not a “person” within the meaning of §1983. See Preval v. Reno, 57 F. Supp. 2d 307, 310 (E.D. Va.1999) (“[T]he Piedmont Regional Jail is not a ‘person,’ and therefore not amenable to

suit under 42 U.S.C. § 1983.”), rev’d on other grounds 2000 WL 20591, \*1 (4th Cir. 2000) (unpublished) (“The court also properly determined that the Piedmont Regional Jail is not a “person” and is therefore not amenable to suit under § 1983.”); Brooks v. Pembroke City Jail, 722 F. Supp. 1294, 1301 (E.D.N.C.1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Therefore, the defendant “York County Detention Center” should be summarily dismissed from this action without prejudice and without service of process.

The named defendant “York County Public Defender” also should be summarily dismissed from this action. An attorney, whether retained, court-appointed, or a public defender, does not act under color of state law, which is a jurisdictional prerequisite for any civil action brought under 42 U.S.C. § 1983. See Deas v. Potts, 547 F.2d 800 (4th Cir. 1976) (private attorney); Hall v. Quillen, 631 F.2d 1154, 1155-1156 & nn. 2-3 (4th Cir. 1980) (court-appointed attorney); and Polk County v. Dodson, 454 U.S. 312, 317-324 & nn. 8-16 (1981) (public defender).

To the extent that defendants Officers Catoe and Guidey<sup>2</sup> are persons amenable to suit under § 1983, the plaintiff’s action should still be dismissed based upon the Younger abstention doctrine. The crux of the plaintiff’s Complaint seems to seek injunctive relief to have this court interfere with his pending state criminal proceedings by ordering the state court to give him a court date and to appoint him a lawyer. A federal court may not award injunctive relief that would affect pending state criminal proceedings absent extraordinary circumstances. In Younger v. Harris, the Supreme Court held that a federal court should

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<sup>2</sup>The plaintiff identified this defendant as Officer Guidey and then later as Officer Guidry. References to “Guidey” refer to this defendant regardless of the correct spelling of his or her name.

not equitably interfere with state criminal proceedings “except in the most narrow and extraordinary of circumstances.” Gilliam v. Foster, 75 F.3d 881, 903 (4th Cir. 1996). The Younger Court noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. Younger v. Harris, 401 U.S. 37, 43-44 (1971). From Younger and its progeny, the Court of Appeals for the Fourth Circuit has culled the following test to determine when abstention is appropriate: “(1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal claims in the state proceedings.” Martin Marietta Corp. v. Maryland Comm'n on Human Relations, 38 F.3d 1392, 1396 (4th Cir. 1994) (citing Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982)).

In this case, the plaintiff is clearly involved in an ongoing state criminal proceeding. The second criterion has been addressed by the Supreme Court: “[T]he States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief.” Kelly v. Robinson, 479 U.S. 36, 49 (1986). The Court also decided the third criterion in noting “that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.” Gilliam v. Foster, 75 F.3d 881, 903 (4th Cir. 1996) (quoting Kugler v. Helfant, 421 U.S. 117, 124 (1975)). This court finds that the plaintiff should be able to vindicate his federal constitutional rights in the state court criminal proceedings. For example, the plaintiff believes that Officers Catoe and Guidey are trying to unfairly pressure him to plead guilty and that they are trying to take advantage of him. If those defendants are acting inappropriately, the plaintiff can inform the state court and his attorney (after one is

appointed) of their actions and seek appropriate relief, if any. Also, the plaintiff can seek appointment of counsel in state court. Therefore, it is appropriate and recommended that this court abstain from adjudicating the plaintiff's § 1983 case.

### **RECOMMENDATION**

This court recommends that the Complaint in the above-captioned case should be dismissed without prejudice and without issuance and service of process. See Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

  
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Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

August 7, 2009  
Columbia, South Carolina

*The plaintiff's attention is directed to the important notice on the next page.*

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the district judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).